



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1998

Ms. Heather Silver
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-2052

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118385.

The City of Dallas (the "city") received a request for the complaints pertaining to a Dallas police officer and the investigations into such complaints. You claim that some of the requested information, IAD investigation control number 97-317SI, is excepted from disclosure by section 552.101 of the Government Code. We assume that you have released the remainder of the requested information to the requestor. You have submitted a sample of the requested documents for our review.¹

The information you have submitted concerns the investigation of two matters, one of which is a sexual harassment allegation. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

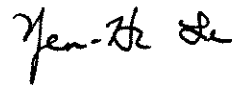
sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Based on *Ellen*, we believe that the city must withhold the victim's and individual witness's statements in which the alleged sexual harassment is discussed and the victim's and witnesses' identities. There exists an adequate summary of the sexual harassment investigation in the documents provided to this office: the January 30, 1998 report and the March 6, 1998 memorandum. We also find that the public interest in the statement of the alleged harasser outweighs any privacy interest he may have in that information. Therefore, the city may not withhold this information. We have marked the information in the submitted documents that must be released under *Ellen*. In addition, to the extent that the remaining documents contain information unrelated to the sexual harassment complaint, you must release such unrelated information after redacting identifying information as discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 118385

Enclosures: Marked documents

cc: Mr. Harold B. Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)